



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,856	11/06/2001	Michael John BEAN	PPD 50341	5612
26748	7590	06/16/2004	EXAMINER	
SYNGENTA CROP PROTECTION, INC.			CLARDY, S	
PATENT AND TRADEMARK DEPARTMENT			ART UNIT	
410 SWING ROAD			PAPER NUMBER	
GREENSBORO, NC 27409			1616	

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/913,856

**Applicant(s)**

BEAN ET AL.

**Examiner**

S. Mark Clardy

**Art Unit**

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

Art Unit: 1616

Claims 1 and 3-16 are pending in this application which has been filed under 35 USC 371 as a national stage application of PCT/GB00/00249, filed January 28, 2000.

Applicants' claims are drawn to aqueous agrochemical concentrates, herbicidal method of use (claim 15), and method of making the compositions (claim 16), the composition comprising:

- a) an agrochemical electrolyte (claim 5: **glyphosate**, fomesafen, glufosinate, **paraquat**, bentazone, ammonium sulfate)
- b) a water insoluble agrochemical system (claims 6-8: **diuron**, linuron, sulfometuron, chlorsulfuron, metsulfuron, chlorimuron, atrazine, simazine)
- c) an alkylglycoside surfactant
- d) a co-surfactant which forms a structured aqueous system with the alkylglycoside (see claim 4):
  - 1) alcohol (aromatic or aliphatic)
  - 2) alkoxyated alcohol, ester, or alkyl phenol
  - 3) glyceryl alk(en)yl ester
  - 4) sorbitan alk(en)yl ester
- e) optionally, cationic, anionic, amphoteric surfactant (claims 9-10)

Exemplified active agents are in **bold** type, above.

Applicants have indicated that Cutler et al (US 6,117, 820), cited in the previous office action is by the same inventive entity (Michael John Bean and Julia Lynne Cuttler) as the instant application (Michael John Bean and Julia Lynne Ramsay). While it appears that Ms. Cuttler and Ms. Ramsay are the same person, applicants are requested to state so on the record.

Art Unit: 1616

The rejection under 35 USC 103 is withdrawn, and replaced with a double patenting rejection, below.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 3-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6,117,820 (Cutler et al), in view of Osborn et al (US 6,010,979) and Finch, Jr. (US 5,078,781), and Albright & Wilson LTD (EP 0 388 239).

Cutler et al teach each component of applicants' invention except for the water insoluble active agent, combined in applicants' structured surfactant system.

Osborn et al teach herbicidal compositions comprising glyphosate, an alkylglycoside surfactant, and an ethoxylated alcohol (col 2, lines 1-22), which may further comprise additional surfactants, humectants, and other surface active agents (columns 5-7), as well as additional herbicidal components such as diuron, linuron, atrazine, simazine, fomesafen, sulfometuron, metsulfuron, chlorimuron, glufosinate, and paraquat, among others (columns 8-9, see groups A, F, J, R, U, X and BB).

Art Unit: 1616

Finch teaches herbicidal compositions comprising both a bipyridilium herbicide such as paraquat (col 3, lines 3-5), and a photosynthesis inhibiting herbicide such as atrazine, diuron, or linuron, among others (lines 6-21), in combination with a surfactant such as a polyalkyl glucoside, polyPO-poly-EO block copolymer, alkyl trimethyl ammonium salt, and/or a polyvinyl alcohol surfactant mixture (abstract, column 4).

Albright & Wilson teach that surfactants such as ethoxylated alcohols are useful in forming structured surfactant systems for agrochemical agents (page 5, claims 1, 9).

One of ordinary skill in the art would be motivated to combine these references because Cutler et al teach aqueous structured agrochemical formulations comprising the same adjuvants disclosed in Osborn et al and Finch, which teach the utility of alkyl (poly)glycoside surfactants, among others in dual component herbicidal compositions. Albright & Wilson teach the structured surfactant properties of ethoxylated alcohols which were also disclosed in Osborn et al and Finch.

Thus it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have combined applicants' components in a single herbicidal composition because both Osborn et al and Finch teach the combination of herbicidal components as claimed herein, in combination with a surfactant system comprising alkylglycoside surfactants and additional surface active agents.

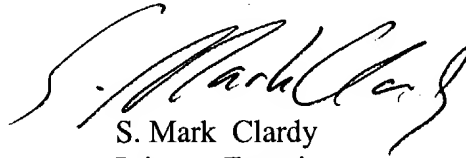
This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103c and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Art Unit: 1616

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is 571-272-0611. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "S. Mark Clardy", is positioned above the printed name and title.

S. Mark Clardy  
Primary Examiner  
Art Unit 1616

June 15, 2004